IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2096 OF 2011

	Mahadeo Rama Chormale, Age : 38 years,Occu : Nil, R/o. At : Saredwadi (Kolekarwast), Taluka : Indapur, District : Pune.	…	Appellant
	Versus		
1	Sabale Waghire Fleet Owners Private Limited. 408/4-5, Gultekadi, Pune-Satara Road, PUNE.		
2	The Oriental Insurance Company, Branch : - Bhigwan Chowk, Baramati, Baramati, District : Pune.	….	Respondents

Mr. Dhananjay Bhosale along with Mr Nanasaheb Gaikwad, Advocate for the Appellant.
Mr. Mohit Turakhia i/b. Mr. Asim Vidyarthi, Advocate for Respondent No.2

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st APRIL, 2024.

<u>Oral Judgment:</u>

1. By way of this appeal, appellant/claimant is seeking enhancement of compensation.

2. It is contention of learned counsel for the appellant/claimant that due to accidental injuries, the claimant has suffered 90% disability but his functional disability is 100%. The claimant was labourer after the accident, he is unable to do any work but the Tribunal has not considered

this fact. The claimant was earning Rs.9000/- per month but the Tribunal has considered his monthly income at Rs.3000/- per month, which is on lower side. Learned counsel further submitted that the Tribunal has awarded compensation on lower side under other heads. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2-Insurance Company that claimant was labourer. To prove his income, no evidence was produced on record. On the basis of evidence produced on record, the Tribunal has considered monthly income of the claimant, which is proper. Learned counsel further submitted that no evidence is produced on record to prove the disability of the claimant. The Tribunal has considered all the aspects while passing judgment and order, no interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Baramati (for short "the Tribunal").

5. To prove his case, the claimant – Mahadeo Chormale examined himself. He has stated that due to accidental injuries, his both legs were fractured. Bones of his both legs were broken into pieces, his both legs were operated and rods were implanted in his legs. At the time of accident, he was working as labourer and was getting Rs.3000/- per month. He has further stated that due to accidental injuries, he has

suffered 90% permanent physical disability and he cannot stand, walk, run and he is unable to do any work. In cross-examination, suggestion was given to the claimant that he has not suffered 90% disability, which he denied.

5.1. In support of his evidence, the claimant has examined PW2-Dr. C. A. Patil. He has stated that after the accident, he has treated the claimant. He has stated that due to accidental injuries, the claimant has suffered fractures injuries in his both legs. After examination, he has issued disability certificate to him. He has suffered 90% permanent physical disability. The disability certificate is at Exhibit-19. This witness further stated that there was infection in the right leg of the claimant, due to which, it has become useless**(nikami)** and it needs amputation. In cross-examination, he has admitted that the claimant was not admitted in his hospital and the claimant was not operated by him.

5.2 While considering disability, the Tribunal has considered disability of the claimant at 30%. I am unable to understand the observations of the Tribunal as it has come on record that the claimant was admitted in YCM Hospital, Pune for fracture injuries. In support of his evidence, PW2 has stated that there was infection in the leg of the claimant and it needs amputation. The claimant is labourer and, due to accidental injuries, he is unable to do his work. Hence, I am considering 100% functional disability of the claimant. The claimant is seeking enhancement of monthly income. I do not find merit in it as the Tribunal has considered proper monthly income of the claimant. In affidavit of examination-in-chief, the claimant has stated that he was earning Rs.3000/-, hence, it is proper.

5.3. The Tribunal has not applied multiplier while calculating compensation. The Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. ltd. vs. Pranay Sethi , 2017 ACJ 2700(SC),*** the claimant is entitled for 40% future prospects. The Tribunal has not awarded amount for loss of amenities in life, I am considering it at Rs.50,000/-. The Tribunal has not awarded amount for loss of expectation of life, I am considering it at Rs.50,000/-. The Tribunal has not awarded amount for future medical expenses, I am considering it at Rs.25,000/-. The Tribunal has given Rs.20,000/- for pain and sufferings, I am considering it at Rs.50,000/-. The Tribunal has awarded Rs.10,000/- for special diet and Rs. 5000/- for travelling, I am considering Rs.50,000/- for special diet and conveyance. The Tribunal has awarded Rs.20,000/- for loss of income during treatment, I am considering it at Rs.50,000/-.

5.4 In view of above, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Annual Income (Rs.3000/- x 12 months)	Rs.	36,000.00
40% future prospects	Rs.	14,400.00
Total	Rs.	50,400.00

Rs.50400/- x 13 (multiplier)	Rs.	6,55,200.00
Loss of Income during treatment	Rs	50,000.00
Medical Expenses	Rs	50,000.00
Special Diet and Conveyance	Rs.	50,000.00
Pain and Suffering	Rs.	50,000.00
Loss of Amenities of Life	Rs.	50,000.00
Future Medical Expenses	Rs.	25,000.00
Loss of Expectation of Life	Rs.	50,000.00
Total Compensation.	Rs	**9,80,200.00**

The Tribunal has awarded Rs. 1,50,000/-, if this amount is deducted from the amount of Rs.9,80,200/- considered by this Court, it comes to Rs.8,30,200/-. The claimants are entitled for this amount.

6. In view of above, I pass the following order :

O R D E R

1. The appeal is allowed.
2. The appellant/claimant is entitled for enhanced compensation of Rs. 8,30,200/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
3. Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
4. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

5. The claimant shall pay court fees on enhanced amount as per Rule.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)